



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 7 2005

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
Certified Mail No. 7003 2260 0005 1961 1650

In Reply Refer to:
EPA OCR File No. 03R-03-R9

Stephen Owens
Director
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007

Re: ACCEPTANCE OF ADMINISTRATIVE COMPLAINT

Dear Mr. Owens:

This is to notify the Arizona Department of Environmental Quality (ADEQ) that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is accepting for investigation an administrative complaint dated July 21, 2003, that was filed by Don't Waste Arizona (DWA). The complaint alleges that ADEQ violated Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.* (Title VI), and EPA's regulations implementing Title VI found at 40 C.F.R. Part 7. Specifically, OCR is accepting the following allegations for investigation:

1. On July 8, 2003, and July 17, 2003, ADEQ intentionally failed to provide an effective complaint mechanism for Latinos living in Hayden and Winkelman, Arizona, to report severe noncompliance with Title V permit conditions at the ASARCO-Hayden smelter (*e.g.*, by having an ineffective hotline), even after ADEQ had notice that its complaint mechanism was inadequate; and
2. ADEQ's system for receiving citizen complaints through the hotline has resulted in a discriminatory impact against Latinos statewide because some Latinos do not have telephones and the system does not work all the time and a disproportionate number of major polluting facilities are located in Latino communities.

Under Title VI, a recipient of federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI implementing regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). DWA's complaint meets the jurisdictional requirements described in

EPA's Title VI regulations for investigations. First, the complaint is in writing. 40 C.F.R. § 7.120(b)(1). Second, it describes an alleged discriminatory act that, if proven true, may violate EPA's Title VI regulations. Third, DWA alleges that discriminatory acts occurred within the 180 days preceding the filing of the complaint with EPA and are ongoing. 40 C.F.R. § 7.120(b)(2). Fourth, ADEQ was a recipient of EPA financial assistance at the time of the alleged discriminatory act(s). 40 C.F.R. § 7.15.

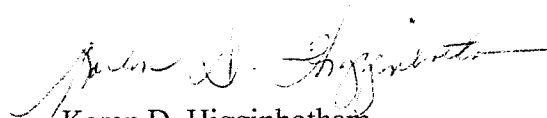
OCR notified ADEQ about the complaint by letter dated July 28, 2003, and provided ADEQ with a copy of the complaint. This is the second complaint filed on behalf of Latinos in Hayden and Winkelman concerning the ASARCO facility and ADEQ's citizen complaint process. The first complaint (2R-02-R9) was filed in February 2002 and accepted for investigation by OCR in August 2002. Inasmuch as both complaints were filed by the same group on behalf of the same community and concern the same facility, the two complaints will be consolidated into one investigation.

The complaint also alleges discrimination on the basis of income status. EPA's Title VI regulations at 40 C.F.R. Part 7 do not prohibit discrimination on the basis of income. Therefore, OCR does not have jurisdiction to investigate complaints of income-status discrimination and will not investigate this alleged basis of discrimination in this complaint.

Pursuant to 40 C.F.R. § 7.120(d)(1)(iii), OCR requests that ADEQ make a written response to the complaint within 30 calendar days of receiving this letter. ADEQ's response should include an explanation of how State residents can file, and how ADEQ responds to, pollution complaints. It should also address DWA's specific allegations about problems with the ADEQ hotline. In addition, ADEQ should provide an explanation of why it believes that its activities are not discriminatory. ADEQ is free to provide whatever additional information it believes is appropriate.

If you have any questions, please contact Mike Mattheisen in OCR by telephone at 202-343-9678, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460-1000.

Sincerely,


Karen D. Higginbotham
Director

cc: Stephen Brittle, President
Don't Waste Arizona, Inc.
6205 South 12th Street
Phoenix, AZ 85040

Steve Pressman, Associate General Counsel
Civil Rights Law Office (MC 2399A)
Office of General Counsel

Jo Ann Asami, Title VI Coordinator
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